

FILED IN
CLERK'S OFFICE

STATE OF INDIANA) IN THE LAKE CIRCUIT COURT
COUNTY OF LAKE)
'06 00 89 24 AM 9 14)
) CAUSE NO. **45C010610PL00458**
) **THOMAS R. PHILPOT**
) **CLERK LAKE CIRCUIT COURT**
) COMMISSIONER, INDIANA DEPARTMENT
) OF ENVIRONMENTAL MANAGEMENT,
))
) Plaintiff,
))
) vs.
))
) ROBERT W. FEDDELER and
) JULIE FEDDELER, personally and individually,
) R&M ENTERPRISES and
) R&M ENTERPRISES OF LOWELL, INC.
) d/b/a FEDDELER LANDFILL, and
) MIDWEST RESOURCE, LLC
) GROUP RESOURCE, LLC, and
) DENNIS HUNTER, personally and individually,
) and
) TOUCH OF GRASS, INC.
))
) Defendants.
))

**CERTIFIED MAIL/
POST MARKED OCT 19 2006**

**MEMORANDUM IN SUPPORT OF VERIFIED COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTION AND FOR CIVIL PENALTIES AND COSTS**

I. INTRODUCTION

The Plaintiff, the Commissioner of the Indiana Department of Environmental Management ("IDEM"), has requested that this Court enjoin the Defendants, Robert W. Feddeler, Julie Feddeler, personally and individually, and R&M Enterprises and R&M Enterprises of Lowell, Inc. d/b/a Feddeler Landfill, 10100 W. 181st Ave, Lowell, Indiana 46356, and Midwest Resource, LLC, Group Resource, LLC and Dennis Hunter, personally and individually, ("Defendants"), from further violations of state environmental laws and rules and violations of the requirements of Facility Permit #45-08 at 10100 W. 181st Ave., Lowell, Indiana 46356, ("the Site"). More particularly, IDEM seeks an order of this Court requiring Defendants

to expeditiously and properly close the landfill, secure the monitoring wells, prevent sedimentation from entering waters of the state and secure and clear the access roads to and on the Site. In addition, IDEM seeks an order requiring Robert W. Feddeler and Julie Feddeler, personally and individually, R&M Enterprises and R&M Enterprises of Lowell, Inc., Midwest Resource, LLC, Group Resource, LLC, and Dennis Hunter, personally and individually, to pay to IDEM statutory civil penalties for violations of the State's environmental statutes and rules and violations of landfill Facility Permit #45-08. Finally, IDEM seeks an order authorizing IDEM to enter the Site to conduct maintenance, perform proper closure of the landfill, secure the monitoring wells and open the access roads at the Site and if the Defendants fail to conduct such activities, requiring Defendants to pay to IDEM the reasonable costs of IDEM's removal, remedial, and closure activities, if such removal, remediation and closure activities become necessary.

II. STATEMENT OF FACTS

Based on inspections at the Site, IDEM has observed several violations of state environmental laws and rules with respect to solid waste land disposal and violations of Facility Permit #45-08 at the Site. See attached, Exhibit 3; see also Exhibits 4, 5 and 6. In particular, Defendants have maintained and operated the Site in a manner that creates an imminent and substantial endangerment to human health and the environment in violation of 329 IAC 10-4-2, which states that no person shall cause or allow the storage, containment, processing, or disposal of solid waste in a manner which creates a threat to human health or the environment, including the creating of a fire hazard, vector attraction, air or water pollution, or other contamination. Furthermore, Defendants have deposited contaminants upon the land in a place and manner that creates or would create a pollution hazard that violates or would violate a rule adopted by one of

the environmental boards in violation of Indiana Code. Ind. Code § 13-30-2-1(3). See attached, Exhibit 3. In addition, Defendants have violated the Facility Permit #45-08 issued by the Indiana Solid Waste Board of Environmental Management. See attached, Exhibit 3. A detailed enumeration of Defendants' alleged violations may be found in IDEM's Verified Complaint, which this Memorandum supports and incorporates herein.

Unless restrained and enjoined by this Court, it is believed that Defendants will continue to violate the applicable state environmental laws and rules regarding solid waste land disposal and water pollution control and will continue to violate the terms and conditions of Facility Permit #45-08 at the Site, which will result in substantial, immediate, and irreparable harm to the Site, to the surrounding area, to IDEM, and to the citizens of Indiana.

III. STANDARD

Courts generally consider four factors when evaluating a preliminary injunction request: (1) the absence of an adequate remedy at law, so that the failure to grant the requested relief will cause irreparable harm if preliminary relief is denied; (2) a reasonable likelihood of success on the merits by demonstrating a *prima facie* case; (3) the threatened injury to the plaintiff outweighs the harm that the grant of an injunction may inflict on the defendants; and (4) the grant of a preliminary injunction must not disserve the public interest. *Reilly v. Daly*, 666 N.E.2d 439, 443 (Ind. App. 1996), *trans. denied*. The granting or denial of an injunction is within the sound discretion of this Court. *Id.*

IV. ARGUMENT

This Court should issue Preliminary and Permanent Injunctions to prohibit Defendants from further violation of the applicable state environmental laws and rules regarding solid waste

land disposal and water pollution control and violations of Facility Permit #45-08 at the Site and to require Defendants to take immediate measures to comply with these requirements.

A. Irreparable harm will result to the Plaintiff if a Preliminary Injunction is not issued.

The first test in determining whether a preliminary injunction should be issued is whether there is irreparable harm without the issuance of the preliminary injunction. Here, because of the proven danger in violating the state environmental laws and rules regarding solid waste land disposal and water pollution control and violations of Facility Permit #45-08 requirements, irreparable harm is shown in two ways.

First, Defendants' violation of the requirements is a violation of law and is *per se* irreparable harm. Where the action sought to be enjoined is unlawful, the unlawful act constitutes *per se* "irreparable harm" for purposes of the preliminary injunction analysis. "When the acts sought to be enjoined are unlawful, the plaintiff need not make a showing of irreparable harm or a balance of hardships in its favor." *L.E. Services v. State Lottery Commission*, 646 N.E.2d 334, 349 (Ind. App. 1995); *Common Council of City of Peru v. Peru Daily*, 440 N.E.2d 726, 733 (Ind. App. 1982). In the present case, it is very clear that Defendants are not in compliance with the applicable requirements. Defendants failure to take the appropriate steps to properly maintain and close the landfill (See Exhibit 3 attached), to prevent further soil, sediment and leachate from migrating offsite (See Exhibit 3 attached), to secure the monitoring wells (See Exhibit 3 attached) and to keep access roads secure (See Exhibit 3 attached), has at least created a significant potential for pollution and contamination and for a health risk at the Site and its surrounding area. Without injunctive relief, IDEM has no reasonable expectation that compliance with environmental standards will be achieved.

Second, even in the absence of *per se* irreparable harm, a preliminary injunction is proper under the traditional standard. This standard requires that the plaintiff establish the absence of an adequate remedy at law, a showing that irreparable harm will result if preliminary relief is denied. *Reilly*, 666 N.E.2d at 443. Under this test, IDEM is entitled to a preliminary injunction against Defendants for the threat of harmful discharges, which represent a substantial threat to the environment, public health, and natural resources. Should Defendants be allowed to continue the unlawful activities at the Site without properly closing the landfill and securing the monitoring wells, the prospective harm could be significant and irreversible. Because of the compelling interests at issue, a later remedy granted to IDEM will be insufficient to accomplish the goal of immediate compliance with the law. "Injunctive relief will be granted if it is more practicable, efficient or adequate than that afforded by law." *Porter Memorial Hospital v. Malak*, 484 N.E.2d 54, 62 (Ind. App. 1985). A belated ruling on the merits that will require the parties to wait, risking further threats to the environment and public health, mandates the issuance of an injunction.

B. The Plaintiff has established a prima facie case that the Defendants' activities threaten the discharge of pollutants into the environment and are unlawful and that the Plaintiff has a reasonable likelihood of success on the merits.

The second prong of the preliminary injunction test is whether the plaintiff can show a reasonable chance of success on the merits. Defendants are the responsible parties for an improperly closed landfill. See attached, Exhibit 1; Exhibit 2; Exhibit 7. Because the landfill was never properly closed, soil, sediment and possibly leachate are migrating offsite into waters of the state, which is in clear violation of state environmental solid waste and water pollution control laws and rules and in violation of Facility Permit #45-08. Furthermore, monitoring wells are not secured on the site allowing for a direct point source of contamination by vandals. See

attached, Exhibit 3. Unsecured access roads may allow anyone to enter the landfill to dump material or otherwise tamper with the landfill structure. See attached, Exhibit 3. Unsecured access to the landfill threatens to cause more pollution if vandals have access to the site. See attached, Exhibit 3. The evidence presented shows that IDEM has met its burden of demonstrating a *prima facie* case that Defendants' actions are unlawful. Therefore, IDEM has more than a reasonable likelihood of success on the merits.

C. The threatened injury to the environment is greater than the harm to Defendants should the injunction issue.

The third prong of the Preliminary Injunction test, to be considered after the Court has found that an injunction is warranted under the first two prongs of the test, is whether the threatened injury to the public is greater than the possible harm to the defendant if the injunction is granted. Defendants' actions are in violation of the law and therefore constitute *per se* irreparable harm, obviating the need for IDEM to engage in a balance of the harms to plaintiff and defendant. *L.E. Services*, 646 N.E.2d at 349. Even if the Court does not find Defendants actions to be *per se* irreparable harm, the threatened harm to the environment should the illegal activities continue to occur as a result of Defendants lack of proper landfill maintenance and closure, failure to secure monitoring wells, and allowing unsecured access roads outweighs the harm that would result if the Court were to order Defendants to immediately commence proper measures. Among other threats, the improperly maintained and closed landfill is an ongoing source of possible pollution migrating offsite. The monitoring wells are unsecured and provide a direct point for contamination of groundwater through vandalism. The access roads are unsecured allowing anyone, including vandals, access to the site to do as they will.

If not enjoined, the harm to the environment, public health, and natural resources is excessive. Without the assurance of injunctive relief, IDEM cannot be assured that Defendants

will achieve compliance to avoid environmental degradation. Although Defendants may incur labor and costs if enjoined, no loss of costs and labor can outweigh the risk to the environment and natural resources and the danger posed to the public in the vicinity of the Site. Thus, the prospective harm far outweighs the possible harm to Defendants in this action and a Preliminary Injunction and Permanent Injunction should be issued.

D. Requiring Defendants to comply with the applicable solid waste laws and regulations and the terms and conditions of Facility Permit #45-08 will serve the public interest.

The fourth test in determining whether a preliminary injunction should be issued is a consideration of the public's interest. When sitting as a court of equity, courts allow extraordinary weight to be placed upon the public interests in a suit where the State is a plaintiff. *See, e.g., Virginia Railway v. System Federation No. 40*, 300 U.S. 515, 552 (1937). This deference is founded upon the unique position of a political branch to identify and protect the public interest. *United States of America v. Marine Shale Processors*, 81 F.3d 1329, 1359 (5th Cir. 1996), *cert. denied* 117 S.Ct. 682 (1997).

The State of Indiana, through its legislature, has spoken as to its will and intent regarding environmental issues and public health with regard to unlawful discharges into the environment. Unlawful maintenance and closure of permitted landfills, unsecured monitoring wells and unsecured access roads can create conditions that are conducive to the discharge of significant amounts of contaminants to the air, water, and soil. It is because of these threats to health and the environment that the state legislature and environmental boards have put in place current environmental statutes and rules. IDEM cannot, and this Court should not, countenance a failure to meet the applicable requirements, which are in place to minimize damage to the environment, state resources, and the public.

Granting this injunction will best serve the public interest, not disserve it. Furthermore, failure to grant an injunction may encourage other persons to violate state environmental requirements in a similar manner, both now and in the future. Thus, granting an injunction will serve the public's interest by serving as a deterrent.

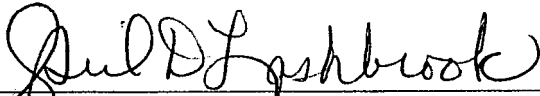
V. CONCLUSION

The Indiana Department of Environmental Management is entitled to both a Preliminary and a Permanent Injunction, which relief will require the Defendants to comply with state environmental laws and rules and requirements found in Facility Permit #45-08. The Defendants are flagrantly disregarding the applicable requirements and a clear and present danger exists. The Indiana Department of Environmental Management respectfully requests that this Court set a prompt hearing on a Preliminary and Permanent Injunction at its earliest convenience and grant IDEM the relief it seeks.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:

A handwritten signature in cursive script, appearing to read "Valerie Tachtiris", written over a horizontal line.

Valerie Tachtiris
Deputy Attorney General
Atty. No. 24421-53

April D. Lashbrook
Deputy Attorney General
Atty. No. 25987-56

Indiana Attorney General's Office
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6290
Facsimile: (317) 232-7979